

WILLIAM J. GIOVAN
JUDGE

(313) 224-5430

April 12, 2002

Clerk of the Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: File 1999-10

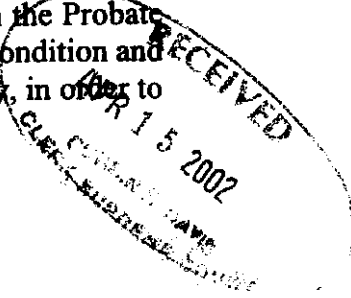
Chief Judge Milton Mack of the Wayne County Probate Court contacted me regarding the recently-published proposed amendment to MRE 1101 that would add a subrule 1101(b)(10) relating to mental health hearings in the Probate Court. Judge Mack has two suggested changes, with which I agree.

The suggested changes from the version published in the Court's Order of March 28, 2002, would read as follows:

- (10) *Mental Health Hearings.* In preliminary hearings under Chapters 4, 4A, 5 and 6 of the Mental Health Code, MCL 330.1400 *et seq.*, the court may consider hearsay data that are part of the basis for the diagnosis OPINION presented by a testifying mental health expert.

The reasons for the suggested changes are these:

1. Elimination of "preliminary." There are no preliminary hearings in these matters because they concern whether a person requires hospitalization and treatment, the hearings must be held within seven days of defined events. There is only one hearing.
2. Substitution of "opinion" for "diagnosis." I did include the word "diagnosis" in my original suggested amendment of this subrule on the premise that the word would cover both a diagnosis of mental condition and an opinion whether the subject presents a danger to himself or others or otherwise requires treatment. Judge Mack informs me, however, that in the Probate Court there is a distinction between the diagnosis of a mental condition and an opinion whether the subject presents a danger. Accordingly, in order to



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preclude a quibble over whether an expert may rely on hearsay in rendering such opinion, it is preferable to use the broader word "opinion," which would include, of course, a diagnosis.

Judge Mack indicates that he has consulted his colleagues in the Michigan Probate Judges Association and that they are in agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Giovan", written over a horizontal line.

William J. Giovan, Chair

WJG:jc

cc: Hon. Milton L. Mack, Jr.
Commissioner Glen B. Gronseth